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In re Application of MILLER, Peter, Anthony :
U.S. Application No.: 09/646,764 :
PCT No.: PCT/AU98/00199 : DECISION ON SECOND
International Filing Date: 26 March 1998 : PETITION TO WITHDRAW
Priority Date: None : HOLDING OF ABANDONMENT
Attorney's Docket No.: None : (37 CFR 1.181)
For: A COST-EFFECTIVE BEER BREWING :
PROCESS :

This decision is issued in response to applicant's petition to withdraw the holding of abandonment under 37 CFR 1.181 filed on 12 March 2003. No petition fee is required.

BACKGROUND

The early procedural background for this application was set forth in the decision mailed by this Office on 20 April 2001. In that decision, applicant's 20 December 2000 petition to withdraw the first holding of abandonment was granted. The decision noted, however, that applicant had not filed a complete declaration in compliance with 37 CFR 1.497. Specifically, the decision noted that the filed declaration was missing page 1. The decision directed the National Stage Processing Branch of the Office Of PCT Operations to issue a Notification Of Missing Requirements requiring applicant to submit a complete declaration and the surcharge for filing the declaration later than thirty months after the international filing date.

On 03 May 2001, the USPTO mailed a "Notification Of Missing Requirements" (Form PCT/DO/EO/905) requiring submission of a proper oath or declaration and the surcharge for late filing of the declaration. The Notification provided an extendable two-month deadline for filing a proper response, and stated that failure to file a timely response would result in abandonment.

On 15 November 2002, a Notification Of Abandonment was issued stating that the application was abandoned for failure to file a timely response to the Notification Of Missing Requirements mailed 03 May 2001.

On 12 March 2003, applicant filed the petition considered herein. The petition asserts that applicant did not receive the Notification Of Missing Requirements mailed 03 May 2001. The petition also argues that the partial declaration filed 22 September 2000, without page 1, should be accepted in compliance with 37 CFR 1.497.

The 12 March 2003 petition also includes a request to change the correspondence address herein from the previous address in Germany to the above-listed address.

DISCUSSION

A. The Declaration Filed 22 September 2000 Does Not Comply With 37 CFR 1.497

Applicant asserts that the partial declaration filed 22 September 2000 fully complies with 37 CFR 1.497. Based on this assertion, applicant argues that there are no missing requirements and the holding of abandonment is therefore inappropriate.

As indicated in the decision mailed 20 April 2001, however, the filed declaration is incomplete. Applicant has completed and filed only page "2 of 2" of the Form PTO/SB/01 "Declaration" (along with three pages of the annex, Form PTO/SB/02). Page 1 of the Form PTO/SB/01 "Declaration," which applicant has not submitted, includes language required under 37 CFR 1.497 and 1.63, for example, the statement required by 37 CFR 1.497(a)(4) that "the person making the oath or declaration believes the named inventor or inventors to be the original and first inventor or inventors of the subject matter which is claimed and for which a patent is claimed." As the incomplete declaration filed by applicant does not include this required statement, the declaration filed on 22 September 2000 does not satisfy 37 CFR 1.497.

Because applicant did not file a complete declaration, the mailing of the Notification Of Missing Requirements on 03 May 2001 was appropriate.

B. Petition To Withdraw Abandonment Based On Failure To Receive Notification Of Missing Requirements

Applicant here asserts that he did not receive the Notification Of Missing Requirements mailed 03 May 2001 upon which the present holding of abandonment is based. This Notification, a copy of which is attached to the present decision, was mailed to the same address as the 20 April 2001 decision and the 15 November 2002 Notification Of Abandonment, both of which applicant has received.

Section 711.03(c)II of the Manual of Patent Examining Procedure (MPEP) sets forth the requirements for a petition based on the failure to receive an Office communication:

The showing required to establish nonreceipt of an Office communication must include a statement from the practitioner stating that the Office communication was not received by the practitioner and attesting to the fact that a search of the file jacket and docket records indicates that the Office communication was not received. A copy of the docket record where the nonreceived Office communication would have been entered had it been received and docketed must be attached to and referenced in practitioner's statement.

Applicant here is handling the prosecution without the help of a legal practitioner, thus the petition requirements referring to official docket records and file jackets might not be applicable. However, to supplement the statement in the present petition that applicant did not receive the Notification Of Missing Requirements, applicant is required to provide a statement setting forth the method in which he handles received mail and copies of any records he maintains in which the receipt of the Notification Of Missing Requirements would have been entered, had it been received.

Based on the above, the present submission fails to satisfy all the requirements for a grantable petition. Accordingly, on the present record, it cannot be concluded that applicant failed to receive the Notification Of Missing Requirements mailed 03 May 2001.

Applicant has raised arguments concerning the mailing procedures used by the USPTO and purported delays in receipt of documents. It is noted that procedures exist by which applicants can request that the response date for an Office communication be restarted based on delayed receipt by the applicant (see MPEP § 710.06). Applicant has not invoked this procedure with respect to any mailings herein.

Finally, applicant argues that the USPTO has not complied with 37 CFR 1.53(f) with respect to the communications issued herein. It is noted that 37 CFR 1.53(f) pertains exclusively to United States nonprovisional applications and therefore is inapplicable to the present national stage application filed under 35 U.S.C. 371.

CONCLUSION

Applicant's petition to withdraw the holding of abandonment based on the failure to receive the Notification Of Missing Requirements mailed 03 May 2001 is **DISMISSED** without prejudice.

Any reconsideration on the merits of this petition must be filed within **TWO (2) MONTHS** from the mail date of this decision, and must include the additional materials and statements discussed above that are necessary for a grantable petition to demonstrate the failure to receive an Office communication.

Extensions of time are available pursuant to 37 CFR 1.136(a).

A courtesy copy of the previously mailed Notification Of Missing Requirements is attached hereto.

Any further correspondence with respect to this matter should be addressed to Mail Stop PCT, Commissioner for Patents, Office of PCT Legal Administration, P.O. Box 1450, Alexandria, Virginia 22313-1450, with the contents of the letter marked to the attention of the Office of PCT Legal Administration.

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encl: Notification Of Missing Requirements (Form PCT/DO/EO/905) mailed 03 May 2001